IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 625 of 1998

in

SPECIAL CIVIL APPLICATION No 9042 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? :YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G S R T C

Versus

PRAVIN JOSHI

Appearance:

1. LETTERS PATENT APPEAL No. 625 of 1998

MR HS MUNSHAW for Appellant

MR RV DESAI for Respondent

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 01/08/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.M.KAPADIA)

1. Instant appeal which is filed under Clause 15 of the Letters Patent, is directed against judgment and order dated April 21, 1998 rendered by the learned Single Judge in Special Civil Application No. 9042 of 1997 by which award dated April 28, 1997 rendered by the Labour Court, Bhavnagar in Reference (LCB) No. 398 of 1993, directing the appellant - Gujarat State Road Transport Corporation ('GSRTC' for short) to reinstate its employee, Pravin C. Joshi - the respondent herein, in service on his original post, with 50% back-wages, is upheld with modification to stop three increments of the respondent without future effect.

2. The respondent was an employee of the GSRTC working in the cadre of Conductor. He joined the services in the time scale with effect from March 4, 1972. On January 7, 1991, when he was on duty in the S.T. Bus, the bus was intercepted and checked by the checking squad of the GSRTC. At that time it was found that the respondent had involved in financial irregularities. Hence, a charge-sheet was issued and departmental inquiry was held against him. As the charges were proved in the departmental inquiry, a show-cause notice was issued to him on October 10, 1991. Thereupon the respondent had filed Regular Civil Suit No.357 of 1991. Since the stay granted in the said suit was vacated, further proceedings of the said show cause notice proceeded further and thereafter he was dismissed from the service with effect from February 24, 1992.

3. Aggrieved by the said order of dismissal, the respondent approached the Assistant Labour Commissioner, Amreli for raising dispute under the provisions of the Industrial Disputes Act, 1947 and filed statement of claim advancing his cause for reinstatement with back-wages. On failure of the conciliation proceedings, the Assistant Labour Commissioner, Amreli referred the dispute to the Labour Court, Bhavnagar for adjudication.

4. The dispute referred to the Labour Court was as under:

"Whether Mr. Pravinbhai Joshi should be

reinstated on his original post with back-wages?"

5. The respondent in the statement of claim advancing his cause for reinstatement in service with full back-wages, contended that the departmental inquiry held by the appellant - GSRTC was not in accordance with law and more particularly against the settled canons of service law. It was alleged that the respondent was not given opportunity to plead his case nor he was allowed to cross-examine the witnesses as well as to engage a lawyer in his defence. It was further alleged that the departmental inquiry was one-sided and prejudicial. It was contended that statements of the witnesses were not recorded nor the evidence of the checking squad was recorded. The cash collected by the respondent from the passengers by way of fare was not counted. The demand of the respondent to call the police was not accepted by the checking squad. The sum and substance of the claim of the respondent was that illegal and baseless findings were recorded by the appellant against the respondent in the departmental inquiry. It was also claimed that before giving reply to the second show cause notice he was removed from the service. It was alleged against the Depot Manager, Patel, that since the demand made by the Depot Manager was not accepted by him, as a counter-blast, the said departmental inquiry was held against him. It was also claimed that the punishment of removal from service was disproportionate to his guilt, therefore, the order passed in the departmental inquiry be quashed and set aside and he may be reinstated in service on his original post with full back-wages.

6. The reference was contested by the appellant by filing written statement inter alia denying all the allegations made against the appellant in the reference. It was also denied that the GSRTC had not followed the procedure of departmental inquiry. It was claimed that the respondent had not exhausted the remedy of filing of second departmental appeal. It was also inter alia stated that the respondent had collected around Rs.90.25 in advance as bus fare from a group of four passengers, i.e., three full and one child, who were travelling from Kheda to Dahod and had not issued tickets to them. It was also alleged that the respondent had collected an amount of Rs.40/- as fare in advance at the rate of Rs.4/- per passenger from five passengers each of two groups but no tickets were issued to them. It was also alleged that the respondent refused to sign on the statements of the passengers about the irregularities. Thus in total eight and two unpunched tickets were demanded from the respondent but he refused to give them.

Therefore, the charge sheet was issued to the respondent for the alleged financial irregularities. In the departmental inquiry proceeded against him he was given full opportunity to defend his case. At the end of the inquiry, the charges were proved against him. Thereupon he was issued a show cause notice and after hearing the said show cause notice the respondent was removed from the service. Therefore, according to the appellant, the appellant has followed the procedure prescribed for departmental inquiry and as the charges levelled against the respondent were proved, he was removed from service after issuing show cause notice and, therefore, there was no illegality committed by the appellant in removing the respondent from service and, therefore, prayed to dismiss the reference.

7. On appreciation, evaluation and analysis of the oral evidence and the documents produced and relied upon by the parties, the Labour Court held that the checking squad had not counted the cash collected by the respondent from the passengers as fare at the time of checking and in the absence of that finding it was impossible to come to the conclusion that the respondent had not issued tickets after collecting the fare from the passengers and, therefore, the charges of financial irregularities levelled against the respondent were not proved and hence the departmental inquiry was vitiated. Besides this, the Labour Court also reached to the conclusion that the punishment imposed upon the respondent was disproportionate to his guilt and therefore ordered the reinstatement of the respondent on his original post with 50% back-wages.

8. Feeling aggrieved by the said award, the appellant invoked jurisdiction of the High Court by filing Special Civil Application No. 9042 of 1997 under Articles 226 and 227 of the Constitution. The learned Single Judge, after hearing the learned advocates appearing for the parties, has upheld the said award vide order dated April 21, 1998, with modification of stoppage of three increments of the respondent without future effect giving rise to instant appeal.

9. Mr. H.S. Munshaw, learned advocate of the appellant, has contended that the impugned judgment recorded by the learned Single Judge in Special Civil Application No. 9042 of 1997 confirming the award of the Labour Court with modification of stoppage of three increments is ex-facie illegal, arbitrary, contrary to the facts and evidence on record as well as against the judgments of the Supreme Court and this Court. He has

further contended that it was not incumbent upon the Labour Court to quash and set aside the order passed in the departmental inquiry. According to him, the sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. However, runs the further submission that, absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. In the instant case, in the departmental inquiry, the respondent was allowed to put his defence. He attended the inquiry throughout. He was permitted to cross-examine the witnesses and at the end of the inquiry he was found guilty to the charge of financial irregularities as the checking squad noticed that the respondent had allowed the passengers to travel in the bus without issuing tickets to them after collecting fare from them and misappropriating the same. It was also claimed that the Labour Court as well as the learned Single Judge have erred in not appreciating the default card which was placed on the record of the case which unequivocally suggests that against the respondent in all there were 15 inquiries and out of these 15 inquiries, in three inquiries, he was removed from service. However, he was reinstated by the order of the Court. Therefore the respondent was in the habit of misappropriating the bus fare collected by him from the passengers by not issuing tickets to them. It was also claimed that the Labour Court had no power to substitute the penalty when the charges were proved against the respondent in the departmental inquiry. He therefore prayed that as the award passed by the Labour Court is contrary to the norms laid down in the departmental inquiry and the pronouncements of the Supreme Court as well as this Court on the law of departmental inquiry, it ought to have been set aside by the learned Single Judge in a petition filed under Articles 226 and 227 of the Constitution. He therefore prayed that the impugned judgment recorded by the learned Single Judge confirming the said award of the Labour Court with modification deserves to be quashed and set aside since the impugned award is contrary to law and settled principles of departmental inquiry. He, therefore, urged to allow the appeal.

10. In support of the aforesaid contentions, Mr. Munshaw has relied upon the following two decisions of the Apex Court:

(i) State of Haryana and another v. Rattan Singh, AIR 1977 SC 1512.
(ii) Karnataka State Road Transport Corporation v.

B.S. Hullikatti, (2001) 2 SCC 574.

11. Mr. R.V. Desai, learned advocate of the respondent, raised a preliminary objection about the maintainability of the appeal filed under clause 15 of the Letters Patent as according to him, appeal filed under Clause 15 of the Letters Patent is not maintainable against the judgment rendered by the learned Single Judge in a petition filed under Article 227 of the Constitution. According to him, though before the learned Single Judge the petition was filed under Articles 226 and 227 of the Constitution, in fact, the petition was filed only under Article 227 of the Constitution since the relief claimed in the petition was to quash and set aside the award of the Labour Court and, therefore, the appeal is not maintainable. It was also contended that while claiming a writ of certiorari in a petition filed under Article 227 of the Constitution, quasi-judicial authority must be made a party in the petition and without joining the quasi-judicial authority, that is, the Labour Court in the instant case, the petition filed by the appellant was not maintainable and therefore obviously the Letters Patent Appeal is also not maintainable.

12. In support of the aforesaid contention, he relied upon a decision of the Supreme Court in the case of Udit Narain Singh Malpaharia v. Additional Member Board of Revenue, Bihar and another, AIR 1963 SC 786.

13. So far as the merits of the case is concerned, according to him, the award passed by the Labour Court was in accordance with law and the Labour Court had correctly considered the evidence adduced before it. The finding arrived at by the Labour Court that without counting the cash collected by the respondent by way of fare from the passengers it was impossible to come to the conclusion that the respondent had collected fare from the passengers and not issued tickets to them and therefore the Labour Court very rightly quashed and set aside the order of removal of the respondent from service passed in the departmental inquiry. It was also claimed by the learned advocate that before the learned Single Judge the petition was filed under Article 227 of the Constitution wherein the scope of interference by the High Court was very limited and confined only to correct the jurisdictional error since it was a review of the decision making process and not the decision itself. According to the learned advocate, in a petition filed under Article 227 of the Constitution, the High Court cannot reappreciate preliminary or perceptive facts found

by the fact finding authority under the statute. In the instant case, the learned Single Judge has rightly appreciated the facts recorded by the Labour Court and has very rightly upheld the award with a modification of stopping of three increments of the respondent without future effect which does not warrant any interference in an appeal filed under Clause 15 of the Letters Patent. It was also emphasised by the learned advocate of the respondent that normally the award of the Labour Court need not be disturbed when the respondent already having worked continuously for more than 5 years after the order of his reinstatement. In support of the aforesaid contention, he relied upon the judgment of the Supreme Court in the case of Gujarat State Road Transport Corporation v. U.A. Malek, (2001) 10 SCC 548. He therefore urged that the appeal being devoid of any merit deserves to be dismissed and the same may accordingly be dismissed.

14. We have considered the submissions advanced at the bar by the learned advocates of the parties and the documents forming part of the petition. We have also considered the impugned judgment and award passed by the Labour Court, Bhavnagar, judgment delivered by the learned Single Judge and the decisions cited at the bar.

15. Since Mr. R.V. Desai, learned advocate of the respondent, has raised a preliminary objection about the maintainability of appeal filed under Clause 15 of the Letters Patent against the order of the learned Single Judge passed in a petition filed under Article 227 of the Constitution, let us examine the scope of appeal filed under Clause 15 of the Letters Patent against the order passed by the learned Single Judge of this Court.

16. According to Mr. Desai, the appellant has mentioned in the cause title of the petition that the petition is filed under Articles 226 and 227 of the Constitution, but in fact the petition is filed under Article 227 of the Constitution only as the appellants have challenged the award passed by the Tribunal and, therefore, the appeal is not maintainable. According to him, merely by mentioning Article 226 of the Constitution in the cause title it cannot be said that the petition is filed under Article 226 of the Constitution whereas according to Mr. Munshaw, the learned advocate of the appellant, if the appellant has in substance filed a petition under Articles 226 and 227 of the Constitution challenging the award of the Tribunal, the appeal under clause 15 of the Letters Patent filed against the order passed by the learned Single Judge in a petition filed

under Articles 226 and 227 of the Constitution is maintainable.

17. In Dilavarsinh Khodubha v. State of Gujarat and others, 1995 (1) GLR 110, a Full Bench of this Court was called upon to answer the question referred by the Division Bench whether a writ petition challenging the legality of an order passed by the Urban Land Tribunal under Section 33 of the Urban Land (Ceiling & Regulation) Act, 1976 is in substance a writ petition filed under Article 227 or only under Article 227 of the Constitution. The Full Bench of this Court, after considering the judgment of the Supreme Court in the case of Umaji Keshao Meshram and others v. Smt. Radhikabai and another, AIR 1986 SC 1272, held that petition filed under Article 226 for a writ of certiorari or a writ in the nature of certiorari would lie against an order of the Urban Land Tribunal passed under Section 33 of the Urban Land (Ceiling & Regulation) Act, 1976, and order made in such petition by the single Judge is subject to appeal under Clause 15 of the Letters Patent.

18. In the case of Kanhaiyalal Agrawal and others v. Factory Manager, Gwalior Sugar Company Limited, (2001) 9 SCC 609, question of maintainability of an appeal filed under clause 15 of the Letters Patent against an order made in a writ petition filed under Articles 226 and 227 of the Constitution challenging the order passed by the Industrial Tribunal arose before the Supreme Court. While answering the said question, the Supreme Court in para 6 of the judgment noticed that so far as the law on the matter is concerned, as to whether an appeal would lie against an order made in writ petition before the High Court challenging an order of the Labour Court, the Supreme Court in its earlier decision in Lokmat Newspapers (P) Ltd. v. Shankarprasad, (1999) 6 SCC 275 has already stated that if a Single Judge exercises jurisdiction under Article 226, Letters Patent Appeal would be maintainable, but if the jurisdiction is exercised under Article 227 it will not be maintainable with a rider that if the Single Judge of the High Court in considering the petition under Article 226 or Article 227 does not state under which provision he has decided the matter and where the facts justify filing of petition both under Article 226 and Article 227 and a petition so filed is dismissed by the Single Judge on merits, the matter may be considered in its proper perspective in an appeal. The Supreme Court held as aforesaid in view of the decisions of the Supreme Court in Umaji Keshao Meshram's case (supra), Ratnagiri District Central Cooperative Bank Limited v. Dinkar Kashinath Watve, 1993

Supp (1) SCC 9 and Sushilabai Laxminarayan Mudliyar v. Nihalchand Waghajibhai Shaha, 1993 Supp (1) SCC 11.

19. Applying the principles laid down by the Full Bench of this Court and the Supreme Court in the aforementioned cases to the facts of the present case, it can be seen that the appellant has filed the petition in substance under Article 226 of the Constitution against the award made by the Labour Court. The appellant has challenged the award of the Labour Court by which direction is issued to the appellant to resinate the respondent on his original post with 50% back-wages. Since the learned Single Judge has upheld the said award with a modification of stoppage of three increments of the respondent, it can be said that while upholding the said award passed by the Labour Court, the learned Single Judge has exercised powers under Article 226 of the Constitution. Therefore, in our considered opinion, when the facts justified filing of petition under Article 226 also and when the petition so filed is in fact dismissed by the learned Single Judge on merits as the learned Single Judge has upheld the award with modification, it will have to be considered in its proper perspective in an appeal. Therefore, in our view, the appeal filed under Clause 15 of the Letters Patent is maintainable.

20. The next contention advanced by Mr. Desai, learned advocate of the respondent, is that in a petition filed under Article 226 of the Constitution, if a writ of certiorari is claimed, the Tribunal or the quasi-judicial authority is a necessary party and without joining them as a party, the petition is not competent. To canvass the said proposition, he has relied upon the judgment in the case of Udit Narain (supra). In Udit Narain's case (supra) the Supreme Court was called upon to decide as to who were the necessary and proper parties in a petition filed for a writ of certiorari. In that case the person in whose favour the order was passed was not joined as a party. The Supreme Court in para 7 of the said judgment while answering the said question has observed thus:

> "7. To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled : it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the

proceeding."

The Supreme Court in para 12 of the said judgment further observed as under:

"12. To summarise in a writ of certiorari not only the tribunal or authority whose order is sought to be quashed but also parties in whose favour the said order is issued are necessary parties. But it is in the discretion of the court to add or implead proper parties for completely settling all the questions that may be involved in the controversy either suo motu or on the application of a party to the writ or an application filed at the instance of such proper party."

21. In the aforesaid case before the Supreme court, since the person in whose favour the order was passed was not made a party, in that fact situation, the Supreme Court observed that without joining that party the petition was incompetent and therefore the petition was rightly rejected by the High Court. In the facts of the present case, it cannot be gainsaid that the respondent herein in whose favour the order is passed by the Labour Court is a necessary party and therefore the respondent is rightly joined as party. Therefore, the question that requires our consideration is as to whether without joining the Labour Court as a party in a petition, was the petition not maintainable. The obvious answer would be "no". In the said judgment, the Supreme Court has left to the discretion of the Court to add or implead proper parties for completely settling all the questions that may be involved in the controversy either suo motu or on the application of a party to the writ or an application filed at the instance of such proper party.

22. In a later decision of the Supreme Court in the case of Savitri Devi . District Judge, Gorakhpur and others, AIR 1999 SC 976, the practice of impleading judicial officer disposing of civil proceedings as contesting respondent has been strongly deprecated by the Supreme Court and it was directed to stop the said practice as judicial officer cannot be equated to officials of Government. In para 14 of the reported decision, the Supreme Court has made a weighty observation in this regard and it would be advantageous to quote the same in this judgment:

"Before parting with this case it is necessary

> for us to point out one aspect of the matter which is rather disturbing. In the writ petition filed in the High Court as well as the Special Leave Petition filed in this Court, the District Judge, Gorakhpur and the 4th Additional Civil Judge (Junior Division), Gorakhpur are shown as respondents and in the Special Leave Petition they are shown as contesting respondents. There was no necessity for impleading the judicial officers who disposed of the matter in a civil proceeding when the writ petition was filed in the High Court; nor is there any justification for impleading them as parties in the Special Leave Petition and describing them as contesting respondents. We do not approve of the course adopted by the petitioner which would cause unnecessary disturbance to the functions of the concerned judicial officers. They cannot be in any way equated to the officials of the Government. It is high time that the practice of impleading judicial officers disposing of civil proceedings as parties to writ petitions under Article 226 of the Constitution of India or Special Leave Petitions under Article 136 of the Constitution of India was stopped. We are strongly deprecating such a practice."

In view of the settled principle enunciated by the Supreme Court in above referred to judgment, the contention that if a writ of certiorari is claimed, the Tribunal or the quasi-judicial authority is a necessary party and without joining them as a party, the petition is not competent, has no substance. In the reported decision before the Supreme Court, the Supreme Court has deprecated the practice of impleading judicial officer disposing of civil proceedings whereas in the case before us, the contention is to join the Tribunal or quasi-judicial authority who disposed of the proceedings while discharging his judicial function, as party respondent. Since the function of judicial officer as well as quasi-judicial officer who dispose of the proceedings while discharging their judicial function is the same, direction of the Supreme Court to deprecate the practice of impleading judicial officer is also equally applicable to the quasi-judicial officer/Tribunal. Therefore, in our considered opinion, without joining the Labour Court, the petition before the learned Single Judge was competent.

23. Having held that the appeal filed under clause 15 of the Letters Patent is maintainable and the petition

for a writ of certiorari without joining the Labour Court as a party in the proceeding was maintainable, now the next question which falls for our consideration is whether the learned Single Judge of this Court has rightly exercised jurisdiction vested in him under Articles 226 and 227 of the Constitution while upholding the award passed by the Labour Court with modification of stoppage of three increments without future effect and whether the award passed by the Labour Court is in accordance with law, within jurisdiction and in consonance with the settled principles enunciated by the Supreme Court in catena of decisions.

24. It cannot be gainsaid that the respondent was initially appointed as a conductor. He joined the services in the time scale with effect from March 4, 1972. On January 7, 1991, when he was on duty in the S.T. Bus, the bus was intercepted and checked by the checking squad of the GSRTC. At that time it was found that the respondent had involved in financial irregularities. Hence, a charge-sheet was issued and departmental inquiry was held against him. As the charges were proved, a show-cause notice was issued to him on October 10, 1991. Thereupon the respondent had filed Regular Civil Suit No.357 of 1991. Since the stay granted in the said suit was vacated, further proceedings of the said show cause notice proceeded further and thereafter he was dismissed from the service with effect from February 24, 1992. Aggrieved by the said order of dismissal, the respondent approached the Assistant Labour Commissioner, Amreli for raising dispute under the provisions of the Industrial Disputes Act, 1947 and filed statement of claim advancing his cause for reinstatement with back-wages. On failure of the conciliation proceedings, the Assistant Labour Commissioner, Amreli referred the dispute to the Labour Court, Bhavnagar for adjudication. In the reference the Labour Court held that the appellant had not counted the cash collected by the respondent from the passengers by way of fare at the time of checking and in the absence of that finding it was impossible to come to the conclusion that the respondent had not issued tickets after collecting the fare from the passengers and therefore the charges of financial irregularities levelled against the respondent were not proved and hence the departmental inquiry was vitiated. Besides this, the punishment imposed upon the respondent was disproportionate to his guilt and therefore the Labour Court ordered the reinstatement of the respondent on his original post with 50% back-wages. Feeling aggrieved by the said award, the appellant invoked jurisdiction of the High Court by filing Special

Civil Application No. 9042 of 1997 under Articles 226 and 227 of the Constitution. The learned Single Judge, after hearing the learned advocates appearing for the parties, has upheld the said award vide order dated April 21, 1998 however, with modification of stoppage of three increments of the respondent without future effect giving rise to instant appeal.

25. It may be appreciated that before the Labour Court the appellant placed reliance on the default card of the respondent. As per the default card against the respondent there were 15 departmental proceedings initiated against him. Almost all the 15 proceedings were in respect of serious misconducts and were related to misappropriation of fare collected from the passengers. It was found that the respondent had collected bus fare from the passengers and misappropriated the same without issuing tickets to them. Out of these 15 departmental proceedings, in three departmental proceedings the respondent was removed from service. However, by the order of the Court he was reinstated in service. In short, the default card unequivocally suggests that the respondent is in the habit of collecting fares from passengers without issuing tickets and thereby misappropriating the amount of the fare, which according to us, is a very serious irregularity and such a conductor can never be permitted to continue in the service any further.

26. In the case of State of Haryana v. Rattan Singh (supra), a bus conductor of a State Transport Undertaking was charge-sheeted for not collecting fares from certain passengers and on his guilt being established there was simple termination of his services because of his long services and young age. It was observed that it could not be said that merely because statements of passengers were not recorded by the Inspector of the flying squad the order that followed was invalid. The evidence of the Inspector was some evidence which had relevance to the charge against the bus conductor and it was held that the order of simple termination of services was valid. It was also held that in a domestic inquiry the strict and sophisticated rules of evidence under the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hear-say evidence provided it has reasonable nexus and credibility. The departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act.

27. In Karnataka State Road Transport Corpn. v. B.S. Hullikatti's case (supra), the respondent was a bus conductor working with the appellant Corporation for nearly 22 years. A domestic inquiry was held in which it was alleged that he had collected at a particular trip of the bus Rs.2.25 from each of the 35 passengers but had issued tickets of the denomination of Re.1.75 only. During the disciplinary proceedings the appellant took into account the fact that the respondent had been found guilty on as many as 36 times on different dates. As a result of the domestic inquiry, the respondent was dismissed from service. Reference was made to the Labour Court which came to the conclusion that the domestic inquiry was not fair or proper. The labour Court by the impugned award came to the conclusion that the allegation that the Conductor had issued tickets of Re.1.75 instead of Rs.2.25 was proved but it had not been proved that he had collected the amount of Rs.2.25 from the passengers. The Labour Court set aside the punishment of dismissal and directed reinstatement with full back-wages. On a writ petition being filed by the appellant Corporation, the Single Judge of the High Court dismissed the same. The Letters Patent Appeal was dismissed. Therefore, Karnataka State Road Transport Corporation approached the Supreme Court by way of Special Leave Petition. In the said case, the Supreme Court while pointing out the responsibility of the bus conductor has observed in para 6 as under:

"On the facts as found by the Labour Court and the High Court, it is evident that there was short-changing of the fare by the respondent from as many as 35 passengers. We are informed that the respondent had been in service as a conductor for nearly 22 years. It is difficult to believe that he did not know what was the correct fare which was to be charged. Furthermore, the appellant had during the disciplinary proceedings taken into account the fact that the respondent had been found guilty on as many as 36 times on different dates. Be that as it may, the principle of res ipsa loquitur, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket more from as many as 35 passengers could only be to get financial benefit, by the conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his is bound to result in financial

loss to the appellant Corporation."

28. Applying the principles laid down by the Supreme Court in the above referred to judgment to the facts of the present case, at the cost of repetition be it stated that the Labour Court has erred in holding that the checking squad had not counted the cash collected by the respondent from the passengers by way of fare. According to us, it was not necessary for the checking squad to count the cash collected by the respondent from the passengers by way of fare and it was sufficient for the checking squad to record the statements of passengers who had paid fare without receiving tickets and according to the ratio laid down by the supreme Court in State of Haryana's case (supra) it was not incumbent upon the departmental authority to record the statement of the passengers who had paid the fare to the conductor but did not receive tickets from him and the passengers whose statements were recorded are not necessary to be examined in a departmental inquiry.

29. The contention of the learned advocate of the respondent that the award passed by the Labour Court need not be disturbed in a petition filed under Article 226 of the Constitution in view of he judgment of the Apex Court in the case of Gujarat State Road Transport Corporation (supra) has no relevance. In the said case the respondent bus conductor was dismissed on the ground of misappropriating money by not issuing tickets to passengers. The Labour Court directed his reinstatement as a fresh appointee without back-wages. The respondent had already worked for about 18 years when the matter came up before the Supreme Court by way of Special Leave Petition and the Supreme Court held that it is inappropriate to upset reinstatement when respondent had been in employment for last 18 years and the Supreme Court declined to interfere with the award in the Special Leave Petition filed under Article 136 of the Constitution. Therefore, in our considered opinion, the ratio laid down by the Supreme Court in the above referred to judgment is not applicable to the facts of the present case as the Supreme Court declined to interfere with the award in the fact situation of that case.

30. In view of the foregoing discussion, we are of the opinion that the interference by the Labour Court in the Reference initiated by the respondent challenging the order of removal from service passed against him in a departmental inquiry was totally unwarranted and without any authority and therefore the award passed by the

Labour Court deserves to be quashed and set aside. Same way, the learned Single Judge of this Court while upholding the said award with modification of stoppage of three increments without future effect has not properly exercised the jurisdiction vested under Article 226 of the Constitution and therefore the order passed by the learned Single Judge is quashed and set aside by accepting the Letters Patent Appeal filed by the appellant.

31. In the above premise, the appeal succeeds and accordingly it is allowed. The judgment and order dated April 21, 1998 passed by the learned Single Judge in Special Civil Application No. 9042 of 1997 is quashed and set aside and resultantly the petition is allowed and thereby the award dated April 28, 1997 rendered in favour of the respondent employee reinstating him in service on his original post with 50% backwages by the Labour Court, Bhavnagar in Reference (LCB) No. 398 of 1993 is quashed and set aside. In the facts and circumstances of the case, there will be no order as to costs all throughout.

(A.R. Dave, J.)

(A.M. Kapadia, J.)

(karan)